

AMENDMENT

Serial No. 09/523,237
Atty. Docket No. GP068-03.CN1

Remarks

Claims 492, 494, 496-502 and 504-555 are presently pending in the subject application.

Reconsideration and allowance are respectfully requested in view of the above amendments and the following remarks.

Claims 495 and 503 have been cancelled herein without prejudice to the prosecution of the subject matter of these claims in this or a future continuing application.

Claim 492 has been amended herein to incorporate the limitation of cancelled claim 495. (Claim 495 was objected to in the Examiner's Final Office Action.) Claim 492 has been further amended to replace the language "RNA polymerase" with "nucleic acid polymerase" as the second component of the claimed kit. This amended language appeared in claim 492 prior to Applicants' Reply dated August 26, 2003. As the type of nucleic acid did not appear to be the basis of the Examiner's rejection, rather the presence of any nucleic acid polymerase in combination with an amplification oligonucleotide that might be labeled or that did not include a promoter sequence, Applicants submit that this amendment does not raise new issues requiring a further search or substantive examination by the Examiner. This conclusion is supported by the fact that former claim 495, which is identical to amended claim 492, was merely objected to in the Examiner's Office Action mailed on June 3, 2003. Accordingly, entry of this amendment is respectfully requested.

Claim 555 has been amended herein to recite that the claimed amplification oligonucleotide includes a promoter sequence. This amendment merely makes explicit what was implicit in the deleted functional language of the claim. Thus, Applicants submit that this amendment does not raise new issues requiring a further search or substantive examination by the Examiner. Accordingly, entry of this amendment is respectfully requested.

Applicants submit that the Examiner's rejection of claims 492, 503, 504 and 555 under 35 U.S.C. § 102(b) and objection to claims 494-504 as being dependent upon a rejected base claim are rendered moot by the amendments to the claims herein. Accordingly, withdrawal of the Examiner's rejection and objection is respectfully requested.

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Applicants submit that the subject application is in condition for allowance and early Notice to that effect is respectfully requested.

No fee is believed due in connection with this Amendment. If Applicants are mistaken, please charge the amount due to Deposit Account No. 07-0835 in the name of Gen-Probe Incorporated.

Certificate of Transmission

I hereby certify that this correspondence (and any referred to as attached) is being sent by facsimile to 703-872-9306 on the date indicated below to Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

Respectfully submitted,

Date: January 9, 2004

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